

Legislative Analysis



SEX EDUCATION INSTRUCTION

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House Bill 5478 as enrolled
Public Act 166 of 2004
Sponsor: Rep. John Stahl

Senate Bill 943 as enrolled
Public Act 165 of 2004
Sponsor: Sen. Wayne Kuipers

House Committee: Education
Senate Committee: Education (Discharged)
Second Analysis (8-30-04)

BRIEF SUMMARY: Senate Bill 943 would require that public school sex education instruction be, among other things, age appropriate, and have goals that are likely to reduce the rates of sex, pregnancy, and sexually transmitted diseases. Further, sex education instruction would have to teach, among other topics, the benefits of abstaining from sex until marriage, and the benefits of ceasing sex if a student is sexually active. Senate Bill 943 would also prescribe co-chairs for a school district's sex education advisory board, ensuring that one chairman would be the parent of a student enrolled in the district.

House Bill 5478 would require that a school district forfeit one percent of its state aid if it failed to comply with the instructional requirements of Senate Bill 943, to which it is tied. House Bill 5478 also would put in place a complaint process for use by those who believe a district is not complying with sex education requirements.

FISCAL IMPACT: Senate Bill 943 would have no fiscal impact on state or local government, while House Bill 5478 could create an indeterminate cost to the Department of Education to investigate complaints and determine whether or not they warrant forfeiture of State Aid. House Bill 5478 would also cost any local school district that failed to meet the requirements of Section 166a an amount equal to one percent of its State Aid.

THE APPARENT PROBLEM:

Many adults who guide adolescent children's moral and intellectual growth express concern about the physical and psychological health of young people when early sexual intercourse results in unwanted pregnancy or sexually transmitted disease. Concerned for the health, safety and well-being of youngsters, including the quality of their work lives and family lives as they grow older, these adults say that sex education classes in public schools should stress the benefits of abstaining from sex until marriage, and include a discussion of the possible emotional, economic, and legal consequences of sex. They also advocate a larger leadership role for parents on school sex education advisory committees.

THE CONTENT OF THE BILLS:

Senate Bill 943 would amend the Revised School Code (380.1169 and 380.1507) to require that public school instruction on HIV, AIDS, and sex education be age appropriate and emphasize the benefits of abstaining from sex until marriage; to stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sex that are not fully preventable except by abstinence; to advise students of the laws pertaining to their responsibility as parents to children born in and out of wedlock; and, to provide information to students about how young parents can learn more about adoption services. Senate Bill 943 would also prescribe the membership, terms, and responsibilities of each school district's sex education advisory board.

House Bill 5478 would amend the State School Aid Act so that a school district that failed to comply with the instructional requirements of Senate Bill 943 would forfeit one percent of its state aid. House Bill 5478 also would put in place a three-step complaint process for use by those who believed a district was not complying with sex education requirements. House Bill 5478 is tie-barred to Senate Bill 943, so that it could not become law unless Senate Bill 943 was also enacted. A more detailed description of each bill follows.

Senate Bill 943 would amend the Revised School Code (MCL 380.1169 et al.), as follows.

Sex Education Instruction. The code permits a school district to offer an elective class in sex education, including family planning, human sexuality, reproductive health, and the recognition, prevention and treatment of sexually transmitted diseases. (A district is required, however, to teach its students about HIV, AIDS, and other communicable diseases.) Any instruction on communicable diseases and sex education currently must include the teaching of abstinence from sex as a responsible method of preventing disease and unwanted pregnancies, and as a positive lifestyle for unmarried young people. The bill would retain these provisions, but would alter the language to require that the instruction "stress that abstinence from sex is a responsible and effective method of preventing unplanned or out-of-wedlock pregnancy and sexually transmitted disease and is a positive lifestyle for unmarried young people".

The material and instruction in the sex education curriculum would have to be age appropriate and medically accurate, and do at least all of the following:

- Discuss the benefits of abstaining from sex until marriage, and the benefits of ceasing sex if a student is sexually active.
- Include a discussion of the possible emotional, economic, and legal consequences of sex.
- Stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sexual intercourse that are not fully preventable except by abstinence.
- Advise students of the laws pertaining to their responsibility as parents to children born in and out of wedlock.

- Ensure that students are not taught in a way that condones violation of the laws of this state pertaining to sexual activity, including, but not limited to sodomy, indecent exposure, gross indecency, and criminal sexual conduct in the first, second, third, and fourth degrees.

- Teach students how to say “no” to sexual advances and that it is wrong to take advantage of, harass, or exploit another person sexually.

- Teach refusal skills and encourage students to resist pressure to engage in risky behavior.

- Teach that the student has the power to control personal behavior, and teach students to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations such as respect for self and others.

- Provide instruction on health dating relationships and on how to set limits and recognize a dangerous environment.

- Provide information for student about how young parents can learn more about adoption services and about the provisions of the Safe Delivery of Newborns Law.

- Include information clearly informing students that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that one of the other results of being convicted of this crime is to be listed on the sex offender registry on the Internet for at least 25 years.

The bill specifies that these requirements would not prohibit a public school from offering sex education with behavioral risk reduction strategies, as defined by law, that were not 100 percent effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted human immunodeficiency virus infection and acquired immunodeficiency syndrome.

Sex Education Advisory Board. Under the code, a district providing a course in sex education must have in place an advisory board to review the material and instructional methods used for the course, and to make recommendations to the district regarding changes in the course materials or methods. The board must consist of parents with children in the district's schools, students in the district's schools, educators, local clergy, and community health professionals.

Under the bill, this board would be called the "sex education advisory board". The local school board would determine the advisory board members' terms of service, the number of members serving, and a membership selection process that reasonably reflected the school district's population. The board would appoint two co-chairs for the advisory board, at least one of whom was a parent with a child attending a school operated by the school district. At least half of the members of the sex education advisory board would have to be parents who had children attending district schools, and a majority of those parent members would have to be parents who were not employed by or at the school district. The bill encourages school boards to also include students enrolled in the

district's schools, educators, local clergy, and community health professionals. Written or electronic notice of a health education advisory board meeting would have to be sent to each member at least two weeks before the date of the meeting.

A sex education advisory board would have to establish program goals and objectives for student knowledge and skills likely to reduce the rates of sex, pregnancy, and sexually transmitted diseases; review the materials and methods of instruction used, and make recommendations to the school board for implementation (taking into consideration a school district's needs, demographics, and trends, including but not limited to teenage pregnancy rates, sexually transmitted disease rates, and incidents of student sexual violence and harassment); and at least once every two years, evaluate, measure, and report the attainment of program goals and objectives. The board would have to make the resulting report available to parents in the district.

Family Planning Drug or Device. The code prohibits a person from dispensing or distributing a family planning drug or device in a public school. The bill would extend this to public school property.

Definitions of "class" and "course". Currently under the law, the term "class" is defined to mean an instructional period of limited duration, not to exceed two hours, within a course of instruction. Under Senate Bill 943, "class" would be defined to mean an instructional period of limited duration and includes an assembly, small group instruction, or any other presentation made to two or more pupils. The definition of a "course" remains the same: a series of classes linked by a common subject matter.

The act prior to Senate Bill 943 said a student could not be enrolled in a "class" in which family planning and reproductive health were to be discussed unless a parent or guardian had been notified in advance of the "course" and the content of the "course", been given the opportunity to review materials used in the "course", and been given the opportunity to have the student excused from the "class". Senate Bill 943 would eliminate the use of the word "course" in the provision and use "class" in each case. However, the bill specifies that if a class is part of a course, then the requirements of this section of the code can be met for the entire course by notifying the students' parents or guardians in advance of the course and the content of the course, giving the students' parents (or guardians) a prior opportunity to review the materials to be used in the course, and notifying the students' parents of their right to have the students excused from the course.

House Bill 5478 would amend the State School Aid Act (MCL 388.1766a), as follows.

Currently, the State School Aid Act requires a district or intermediate district providing instruction on reproductive health or other sex education under the Revised School Code to comply with certain requirements, or forfeit five percent of its total state aid allocation. (These requirements include informing students that sex with a person under 16 is a crime punishable by imprisonment; notifying parents of the content of the instruction; and notifying parents of their right to excuse their child from instruction.) Under the bill,

these provisions would be retained; however, a district that violated the law would forfeit one percent of its state aid allocation.

House Bill 5478 also specifies that if a person who resided in a district believed that the district had violated these requirements or the requirements contained in the Revised School Code pertaining to AIDS/HIV and sex education (including those proposed by Senate Bill 943), the person could file a complaint following a three-step protocol.

First, the complaint would be filed with the local school superintendent or chief administrator of the district, and he or she would have to provide a written report of findings within 30 days. If the investigation revealed that one or more violations had occurred, the report would contain a description of each violation, and of the corrective action the district (or intermediate district) would take to correct the situation. The corrective action would have to be taken within 30 days after the date of the written report.

Second, if the parent who filed the complaint with a district believed that the district was still not in compliance with the law based on the findings made, the parent could appeal the findings to the intermediate district in which the school district was located. If there were an appeal, the intermediate superintendent would investigate, and within 30 days after the date of the appeal, provide a written report of his or her findings. Again, if the investigation revealed violations, then the intermediate district superintendent, in consultation with the local district, would be required to develop a plan for corrective action. The plan for corrective action would be included with the written report provided to the parent (or legal guardian), and to the state superintendent of public instruction. Then the district would be required to take the corrective action within 30 days.

Third, if the parent who filed the complaint believed that the district or intermediate district was still not in compliance with the law based on the findings made by the intermediate superintendent, then the parent could appeal to the Department of Education. If there were an appeal to the department, officials would investigate the complaint, and within 90 days after the date of the appeal, provide a written report of findings to the parent, to the state superintendent of public instruction, and to the superintendents of the local and intermediate school districts. If the department found violations as a result of its investigation, then all of the following would apply:

- a) the department would develop a plan for corrective action for the district or intermediate district, and include the plan with the written report provided to the parent (or legal guardian), the state superintendent, and the superintendents of the local and intermediate school districts. Then the districts would have to take corrective action within 30 days.
- b) In addition to withholding the percentage of state school aid forfeited by the district or intermediate district, the Department of Education could assess a fee to the district or ISD that committed the violation, in an amount not to exceed the actual cost to the department of conducting the investigation and making the reports required.

The Department of Education, with the approval of the state superintendent, would have to establish a reasonable procedure for filing these complaints, so that they did not place an undue burden on the complainant, the school district, or the department. The bill would require the department to track the number of complaints and appeals it received for the 2004-2005 school year, and not later than the end of that school year, submit a report to the standing committees and appropriations subcommittees of the legislature having jurisdiction over education legislation and state school aid. The report would detail the number and nature of the complaints and appeals, and the cost to the department of handling them.

ARGUMENTS:

For:

Teen pregnancy is still high in many Michigan counties, and there are unacceptable rates of sexually transmitted diseases. Critics say that this is evidence that the current sex education curriculum being used in public schools does not work. The curriculum needs a stronger emphasis of marriage and abstinence from sexual intercourse until after marriage. It should be updated regularly, so that ineffective materials can be discarded, and new ones with greater efficacy introduced. All of these decisions should be made with the advice of students' parents, working as advisors to educators who offer the sex education programs. These bills are important because they signal a new and bolder commitment to sex education that reduces sexual intercourse before marriage, as well as unwanted pregnancies and sexually transmitted diseases.

For:

One person who testified drew an analogy between the new sex education being proposed and the popular and widespread Drug Abuse Resistance Education (DARE) program. That program has three major tenets: a) to teach consequences for bad choices, b) to teach about the effects of peer and personal pressure, and c) to instill self-esteem and the ability to make better choices. In many ways, a sex education program that stresses abstinence from sexual intercourse until after marriage must instill the same values, attempting to stop a problem before it starts. The same logic can be used to teach the subject of abstinence. And like DARE, it has the potential to save lives, dreams, and money.

Against:

Many parts of the proposed bills are redundant—already addressed by state statute. Michigan's existing laws governing sex education in schools are more than adequate. Already the current laws require abstinence education, specify that an advisory committee be established made up of parents with children in the school district, prohibit the teaching of abortion as a method of family planning, require two public hearings to receive comments on proposed programs prior to adoption of any program, and provide that parents may opt out, if they do not want their children to participate in the instruction. By stressing abstinence and parental involvement, current laws are especially parent-friendly. Consequently, the proposed bills are duplicative and unnecessary.

Against:

Many who oppose these bills note that abstinence from sexual intercourse before marriage is the strongest component of nearly all sex education programs in the state. Nonetheless, the Youth Risk Behavior Survey of 2001 indicates that fully 60 percent of all high school seniors have had sexual intercourse. Consequently, sex education programs must emphasize abstinence, and then also must meet the needs of students who already are sexually active. What is more, the programs must address the needs of those who will never marry. Public schools are charged with teaching *all* students. In sum, schools must be in the business of preparing students for life, and for some sexually active people that will not include marriage at all, while for others it will mean sex after marriage, and yet others, sex before and after marriage. All students need the knowledge and skills to remain abstinent, but they also must be prepared for the decisions they will be making as adults. These bills could constrain educators from offering sex education programs that promote abstinence as a healthy choice for young people, and also prepare them for future health decisions that will help them reduce the risk of unplanned pregnancy and/or sexually transmitted infections.

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